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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,667	08/27/2001	Jens Petersen	60117.000006	2505

7590 12/29/2004

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/938,667

Applicant(s)

PETERSEN

Examiner

Blessing M. Fubara

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 54 and 55.Claim(s) objected to: 16,51-53,57 and 62-64.Claim(s) rejected: 9-15,17,29-38,47 and 49.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 3. Applicant's reply has overcome the following rejection(s): Anticipation rejection by Pavlyk (RU 2034465) and WO 96/04943 and obviousness rejection over Vogel et al. (US 6,335,028).

Continuation of 10. Other: Regarding Double Patenting: Upon reconsideration of the rejections under the obviousness-type double patenting, the obviousness-type double patenting rejection over co-pending applications 09/938,668 and 09/938,669 is withdrawn. However, the obviousness-type double patenting rejection over co-pending application 09/938,670 is maintained as it applies to claims 9-15, 17, 29-38, 47 and 49. Applicants in the remarks filed 12/14/04 indicated that the amended claims of co-pending application 09/938,670 will not render obvious the examined claims of 09, 938,667. A terminal disclaimer was not filed. Claim 1 of the 09/938,670 contains the elements of the composition of the instant claims that is implanted as an endoprosthesis to treat incontinence. The viscosity of 2-90 Pas is the same for the composition of both applications. Co-pending claims 12 and 44 use the composition as implantable endoprosthesis or injectable endoprosthesis respectively. The instant claims administer the composition as an endoprosthesis or administer endoprosthesis that includes the composition. The copending composition, which is the same as the instant examined composition, will exhibit the same effect of treating incontinence when administered by implantation or injection of the endoprosthesis that contains the composition. .


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